

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

**FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

And

HON'BLE SRI JUSTICE M. GANGA RAO

+Writ Petition No.25200 of 2018

% 16-08-2018

Between:

Tata Nymisha Goud, D/o Singaiah Goud,
Aged about 18 years, Occ: Student,
R/o F.No.205, Gynadeep Towers, Moosarambagh,
Malakpet, Hyderabad.

... Petitioner

Vs.

The State of Telangana, represented by Principal
Secretary, Health, Medical and Family Welfare
Department, Secretariat Buildings, Hyderabad and
7 others

... Respondents

! Counsel for the Petitioners : Mr. K.G. Krishna Murthy,
Senior Counsel

^ Counsel for Respondents : G.P. for Medical & Health (TG)
Mr. A. Prabhakara Rao,
Standing counsel for University
Learned Asst. Solicitor General

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> Head Note:

?Cases Referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

and

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.25200 of 2018

ORDER: (*per V. Ramasubramanian, J*)

Challenging an amendment to the Government Order in the matter of according priority for candidates holding different kinds of Certificates from NCC, under the quota reserved for NCC for admission to Professional Medical and Dental Courses, the petitioner has come up with the above writ petition.

2. Heard Mr. K.G. Krishna Murthy, learned senior counsel appearing for the petitioner, learned Government Pleader for Health, Medical and Family Welfare appearing for respondents 1 to 3, Mr. A. Prabhakara Rao, learned standing counsel appearing for the 5th respondent-University and the learned Assistant Solicitor General for the respondents 7 and 8.

3. In exercise of the powers conferred by Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, the Government of Andhra Pradesh issued a set of Rules known as Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Under Graduate Professional Courses through Common Entrance Test) Rules, 1993 under G.O.Ms.No.184, Education (E.C.2) dated 20-08-1993. Rule 8 (4) (b) of these Rules provided for a reservation of 0.25% of the total number of seats in Dental and Medical Courses, to National Cadet Corps. Rule 8 (4) (c)

made it clear that the priorities in respect of the said category shall be as declared by the Government.

4. In accordance with Rule 8 (4) (b) and (c), the Government of Telangana issued G.O.Ms.No.75, Health, Medical and Family Welfare dated 08-09-2015, after consulting the Deputy Director, NCC, indicating the priorities to be adopted among candidates belonging to NCC, for admission under the quota reserved for NCC. It is relevant to note here that the percentage of reservation as originally fixed at 0.25% under G.O.Ms.No.184, was later increased to 1%. It is also relevant to note at this juncture that there is only one Medical University in the State of Telangana and all Medical Colleges in the State of Telangana are affiliated to the said University. It appears from the statement made across the bar by Mr. A. Prabhakara Rao, learned standing counsel for the 5th respondent-University that the total number of seats reserved for NCC in the State works out to 19.

5. G.O.Ms.No.75, dated 08-09-2015 divided the priorities into three categories namely Priority-I, Priority-II and Priority-III. Within each category, there were several sub-categories. In view of the enormous amount of sub-categories and sub sub-categories, for allotment to 19 seats, the allotment under this quota becomes a nightmare, posing a great challenge even to mathematical geniuses across the globe. It must be remembered that this is a horizontal reservation, which has to be applied along with reservations for sports persons, women, physically challenged and children of Armed

Forces. The horizontal reservation for all these categories is to be applied only after the application of the vertical reservation (1) for local area candidates in terms of the Presidential Order under Article 371-D of the Constitution (2) for socially and educationally backward classes and (3) for Scheduled Castes and Scheduled Tribes.

6. In the Government Order in G.O.Ms.No.75, dated 08-09-2015, it was indicated under each category of priority that among the selected cadets, priority will be given in the order of seniority of certificates that is "C", "B" and "A" Certificate holders. It must be pointed out at this stage that "B" Certificate is superior to "A" Certificate and "C" Certificate is superior to "B" Certificate.

7. Note-1 under G.O.Ms.No.75, dated 08-09-2015 stipulated that "Priority will be considered in "C", "B" and "A" Certificates attained prior to appearing in qualifying examination i.e. EAMCET/CET".

8. In other words, Note-1 of G.O.Ms.No.75, gave an impression that EAMCET/CET is to be taken as the qualifying examination, for the purpose of finding out the priority to be accorded to a NCC certificate holder.

9. Since the understanding of the Government as reflected by Note-1 of G.O.Ms.No.75, dated 08-09-2015 as to what constituted a "qualifying examination", ran contrary to the accepted concept of what a "*qualifying examination*" is, several candidates came up with a challenge to the said prescription, during the Academic Year 2016-2017. By a common interim order passed on 09-09-2016 in a batch

of those writ petitions in W.P.Nos.30291, 30355, 26163, 33890, 32805 and 33775 of 2016, this Court directed both the States of Telangana and the Sate of Andhra Pradesh to construe the expression “*qualifying examination*” only to mean a pass in the Intermediate or the equivalent examination and not EAMCET/CET.

10. Challenging the common interim order passed by this Court, the petitioners in W.P.Nos.32805 of 2016 and batch, filed a Special Leave Petition in SLP (Civil) No.29792 of 2016. After granting leave, Civil Appeal No.5400 of 2017 was disposed of by the Supreme Court directing the Government to admit the appellants therein in the quota reserved for NCC for the academic year 2017-2018, though the writ petitions related to the academic year 2016-2017.

11. Subsequently, the Government of Telangana came up with an amendment under G.O.Ms.No.149 Health, Medical and Family Welfare, dated 19-08-2017. By this order, Note-1 of G.O.Ms.No.75, dated 08-09-2015 was amended, to make it clear that “*qualifying examination*” would only mean 10+2 examination or equivalent examination. For the purpose of easy appreciation, Note-1 under G.O.Ms.No.75, dated 08-09-2015 and the amended Note-1 under G.O.Ms.No.149, dated 19-08-2017 are furnished in a tabular column as follows:

Note-1 under G.O.Ms.No.75, dt 8-9-2015	Note-1 under G.O.Ms.No.149, dt. 19-08-2017
Priority will be considered in “C”, “B” & “A” Certificates attained prior to appearing in qualifying examination i.e. EAMCET/CET.	Priority will be considered in “C”, “B” & “A” Certificates obtained prior to appearing in qualifying examination i.e. 10+2 Intermediate or equivalent examination.

12. The petitioner herein applied for admission to Professional Medical courses for the academic year 2017-2018, but she was found ineligible on account of being under-aged. Though the petitioner came up with a writ petition in W.P.No.11494 of 2017 seeking relaxation of the lower age limit and also secured an interim order, the writ petition failed. Therefore, the petitioner could not secure admission to the Medical Courses in the last academic year.

13. It appears that during this period namely, 2017-2018, the petitioner upgraded her status in NCC from "A" category to "B" category and from "B" category to "C" category. To be precise, the petitioner had obtained "A" certificate in May, 2014. She secured "B" Certificate in 2017 and "C" certificate in 2018.

14. Obviously, the certificates in "B" and "C" were obtained by the petitioner, after completing the Higher Secondary course and while waiting for one year to improve her performance in NEET, so as to secure admission to professional courses. But the amended Note-1 has now prevented the petitioner from reaping the benefit of the "B" and "C" certificates that she has secured after passing the Higher Secondary course. Therefore, the petitioner has come up with the above writ petition challenging the amended Note-1.

15. At the cost of repetition, for the purpose of clarity, it must be stated that prior to the impugned amendment, "B" or "C" certificates in NCC, obtained after completion of the Higher Secondary course, but before taking NEET, were considered for according priorities. But now under the impugned amendment, the

“B” or “C” certificates in NCC obtained after the completion of Higher Secondary course are not taken into account. This is the grievance of the petitioner.

16. The impugned amendment is assailed by Mr. K.G. Krishna Murthy, learned senior counsel appearing for the petitioner, on three grounds namely (1) that it runs contrary to the Medical Council of India Regulations; (2) that it runs contrary to the stand taken by the NCC Directorate in their counter affidavit in a previous writ petition; and (3) that it runs contrary to the NCC Rules.

17. We have carefully considered the above submissions.

18. The first contention revolves around the Regulations issued by the Medical Council of India. The Regulations on Graduate Medical Education, 1997 issued by the Medical Council of India in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956, were amended by a Notification dated 21-12-2010. By this amendment of the year 2010, clause 4 (2) of Chapter-II was amended to include certain words. After the inclusion of those words, clause 4 (2) of Chapter-II read as follows:

“In order to be eligible to take National Eligibility-cum-Entrance Test, he or she has passed qualifying examination as under.”

19. On the basis of the above amendment, it is contended by Mr. K.G. Krishna Murthy, learned senior counsel that after the 2010 amendment to the GME Regulations 1997, NEET has become the qualifying examination and that therefore, a State Government order cannot run contrary to the Regulations of the Medical Council of India.

20. But we do not agree. Clause 4 (2) of Chapter-II of GME Regulations, 1997, if read in full, will clear any air of suspicion or doubt over what a qualifying examination is. There are six sub-clauses namely (a) to (f) under clause 4 (2) of Chapter-II. While sub-clause (a) refers to the Higher Secondary Examination or its equivalent, sub-clause (b) refers to Intermediate Examination, sub-clause (c) refers to pre-professional/pre-medical Examination, sub-clause (d) refers to the first year of a Three Year Degree course with Physics, Chemistry and Biology, sub-clause (e) refers to a Degree in Science, with relevant subjects and sub-clause (f) refers to any other examination. None of these sub-clauses underwent any change by the amendment dated 21-12-2010. It may be useful to extract clause 4 (2) along with all the six sub-clauses as follows:

“(2) “In order to be eligible to take National Eligibility-cum-Entrance Test,” He/she has passed qualifying examination as under:

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Provided that two years of regular and continuous study of Physics, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Candidates who have passed 10+2 from Open Schools or as Private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test. Furthermore, study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not be permissible.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges.

or

(b) The Intermediate examination in Science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.

or

(c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry & Biology and also English as a compulsory subject.

or

(d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course.

or

(e) B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects - Physics, Chemistry, Biology and English.

or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English.

Note:

The pre-medical course may be conducted either at Medical College or a Science College. Marks obtained in mathematics are not to be considered for admission to MBBS course. After the 10+2 course is introduced, the integrated courses should be abolished."

21. Read in entirety, it will be clear that even the Medical Council of India Regulations indicate a pass in any one of the examinations mentioned in sub-clauses (a) to (f) alone as the qualifying examination and not NEET. The very dispute surrounding the introduction of NEET, with the Supreme Court setting aside the Regulations in the first instance and allowing the review applications thereafter would show that NEET was supposed to be a second filter point. A person, who has not qualified in any one of the examinations indicated in clauses (a) to (f) cannot even appear for NEET. Therefore, the impugned amendment under G.O.Ms.No.149 cannot be termed as contrary to the amended clause 4 (2) of Chapter-II of MCI Regulations.

22. The second contention revolves around the stand taken by the NCC Directorate in their counter affidavit filed in W.P.No.28200 of 2015. Paragraph 6 of the counter affidavit reads as follows:

"6. In reply to para 13 to 18 of the affidavit, I submitted that NCC Certificate holders of C, B and A will be given priority in the order of seniority of the certificates. NCC Directorate has not clarified that 'C' and 'B' Certificates secured at the Intermediate level shall be treated as 'B' alone if they have acquired the certificates prior to appearing in the qualifying examinations as stated by the petitioner. According to the new NCC syllabus 'C' certificates can be obtained only at Degree level not at Intermediate level, but the cadets who are already having 'C' certificates previously cannot be deprived of the opportunity to claim higher priority. It is also pertinent to mention that a candidate doing his/her graduation and allowed to write EAMCET, and acquire 'C' Certificate during graduation but before qualifying examination i.e. EAMCET as per GO cannot be deprived giving higher priority. Accordingly, priorities were given to the certificates acquired before qualifying examination i.e. EAMCET which is in order."

23. We do not think that the NCC Directorate can have a say in the matter of how the expression *"qualifying examination"* has to be construed by the State Government. In fact, the first Government Order of the State of Telangana in G.O.Ms.No.75, dated 08-09-2015, which was *in pari materia* with the Government Order of the State of Andhra Pradesh in G.O.Ms.No.109 dated 18-08-2016, attempted to paint the expression *"qualifying examination"* to mean EAMCET/CET. But as this Court pointed out in yet another judgment dated 02-08-2017 in W.P.No.23472 of 2017 and batch of cases, the said prescription was contrary to law. Three reasons were quoted in the judgment dated 02-08-2017 in W.P.No.23472 of 2017, for holding that Note-1 in G.O.Ms.No.75, was not in tune with the law. They are:

“(1) Explanation (ii) under Paragraph 4 of the Presidential Order known as Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 makes it clear that the expression “relevant qualifying examination” in relation to admission to any course of study would mean the examination, a pass in which is the minimum educational qualification for admission to such course of study. It must be pointed out that the Presidential Order of the year 1974 was issued by the President in exercise of the powers conferred by the Article 371D of the Constitution and hence no Government Order can go contrary to the Presidential Order.

(2) Rule 2(1)(p) of the Andhra Pradesh Educational Institutions (Regulation of Admission Into Under-Graduate Entrance Test) Rules, 1993, also defines ‘qualifying examination’ to mean the examination of the minimum qualification prescribed, the appearance/passing of which entitled one to seek admission into the relevant professional course. These statutory rules were issued by the Government in exercise of the powers conferred by Section 3 r/w Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. In fact, it is only these rules that provided for the first time a reservation for NCC cadets for admission to medical and dental courses. Rule 8 of these Rules of the year 1993 provided for region wise reservation, reservation for SC/ST/BC communities, reservation for women, reservation for physically challenged and reservation for games and sports as well as National Cadet Corps. In other words, the very right of the candidates to seek reservation for NCC was born out of these statutory Rules of the year 1993 and hence no Government Order regulating such reservation can go contrary to the definition contained in the statutory Rules that contain a definition. What the petitioners now want is to give an interpretation to the expression ‘qualifying examination’ in the matter of reservation for NCC candidates, that goes completely contrary to the definition of the very same expression found in the statutory Rules by which this very reservation was born.

(3) The aforesaid Rules of the year 1993 were superseded by two different sets of Rules issued in the year 2003. One set of Rules were issued under G.O.Ms.No.486, dated 05.09.2003 and another issued under G.O.Ms.No.488, dated 05.09.2003. One set of Rules were applicable to all Government Professional Institutions imparting Under-Graduate Professional Courses in Medicine and Dentistry. The other set of Rules were applicable to Un-Aided Non-Minority Professional Institutions importing undergraduate professional courses in Medicine and Dentistry. Even these Rules define the expression qualifying examination to have the same meaning as assigned under the 1993 Rules. The Rules issued under G.O.Ms.No.486 define the expression ‘qualifying examination’ under Rule 2(l) to mean, the examination of the minimum qualification prescribed,

passing of which entitles one to seek admission into the relevant professional course. The same definition was adopted in Rule 2(1)(xiv) of the Rules issued under G.O.Ms.No.488.”

24. Therefore, the fact that NCC Directorate understood the expression “*qualifying examination*” in a particular manner, especially in a writ petition of the year 2015, is of no significance. In the year 2015, G.O.Ms.No.75 held the field and hence, the NCC Directorate took such a decision in tune with the State Government order. Today, G.O.Ms.No.75 stands amended. Therefore, what was reflected in the counter affidavit at the time when the Government Order was differently worded cannot be relied upon.

25. The third contention revolves around the NCC Act and Rules. It appears that the NCC Directorate has prescribed eligibility conditions for appearing for certain Certificate Examinations. For taking “C” certificate examination, a candidate must be in possession of a “B” certificate and must be in the third year of Senior Division/ Senior Wing of NCC training. Therefore, unless a candidate has completed the prescribed training, which can happen only after the completion of the Higher Secondary course, a candidate cannot get a “C” Certificate. Hence, it is contended that when the very eligibility for obtaining a “C” certificate in NCC is acquired only after completion of Higher Secondary examination, the expression “*qualifying examination*” cannot be understood to mean a pass in the Higher Secondary Examination.

26. But the above contention loses sight of the fact that the ***NCC Directorate does not offer “A”, “B” and “C” Certificates to***

candidates, solely for the purpose of seeking admission to Medical Courses. The Rules of NCC are not tuned to produce potential doctors. On the contrary, these Rules are used by the potential doctors to pervert the reservation provided.

27. As we have seen from clauses 4 (2) of the Medical Council of India Regulations, there are six different examinations, which are provided as “qualifying examination”. Sub-clause (d) and sub-clause (e) of clause 4 (2) speak respectively about the first year of the three years Degree course with Physics, Chemistry and Biology and a B.Sc. Degree with certain subjects. When candidates, who fulfill the eligibility criteria under sub-clause (d) or (e) of clause 4 (2) of Chapter-II apply under the quota reserved for NCC, they will make use of the “C” Certificate obtained from NCC. It is not intended to benefit candidates who either wait for one year or join in B.A. History and Geography and who simultaneously upgrade their skills in NCC without upgrading their performance in NEET. Therefore, the third contention also deserves to be rejected.

28. Reliance was also placed by the learned senior counsel for the petitioner upon the judgment of the Supreme Court dated 18-04-2017 in Civil Appeal No.5400 of 2017, which arose out of the interim order passed by this Court on the very same issue in W.P.No.32805 of 2016.

29. But at the time when an interim order was passed in W.P.No.32805 of 2016, G.O.Ms.No.75 held the field. Therefore, without laying down the law as to what the expression “qualifying

examination” would mean, the Supreme Court granted relief to the petitioners therein. The Supreme Court very clearly recorded a finding that there was confusion at the time when the Government Order was in vogue. Therefore, the Supreme Court granted relief on the principle of *ex debito justitiae*. The relevant portion of the order of the Supreme Court reads as follows:

“As there was confusion at the time the Government Order was in vogue we are inclined to direct the present appellants shall be admitted in the academic years 2017-2018 in the NCC category and for the said year the quote shall stand lessened by the said number. The principle of ex-debito justitiae has to be made applicable and hence, we so direct. We have passed the present order to meet the situation that has been created by the High Court.”

30. In view of the above, it is clear that the interpretation given by this Court to the expression “*qualifying examination*,” in W.P.No.32805 of 2016 was not over turned by the Supreme Court. In any case, the Government has now amended G.O.Ms.No.75, through G.O.Ms.No.149, making it clear that qualifying examination would mean 10+2 Intermediate or equivalent examination. Therefore, nothing more can now be done.

31. As a matter of fact, the impugned Government Order G.O.Ms.No.149, dated 19-08-2017 issued by the State of Telangana is, *in pari materia*, with G.O.Ms.No.123, dated 24-07-2017 issued by the State of Andhra Pradesh. This G.O.Ms.No.123, dated 24-07-2017 of the State of Andhra Pradesh came under a limited attack in W.P.No.25807 of 2017, in the last academic year, on the ground that it can have only prospective effect from the academic year 2018-2019, as the admission notification for the year 2017-2018 was

already issued before the advent of G.O.Ms.No.123. But this limited challenge was also rejected by a Bench of this Court by an order dated 12-08-2017. Therefore, G.O.Ms.No.123 now holds the field in the State of Andhra Pradesh. It cannot be different in the State of Telangana and by the order impugned in the writ petition, a level playing field is restored in both the States. Therefore, we find no merits in the writ petition.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.



V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: 16-08-2018

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